

REMARKS

Applicants thank the Examiner for the thorough examination given the present application.

Status of the Claims

Claims 1-12 are pending in the above-identified application. Claims 6 and 7 have been rewritten into independent form. Claim 8 has been amended to recite “relative humidity” rather than its abbreviation of “RH.” Support for new claim 11 can be found in the present specification, *inter alia*, at paragraphs [0023]-[0024]. Support for new claim 12 can be found in claims 1 and 10. Thus, no new matter has been added. Based upon the above considerations, entry of the present amendment is respectfully requested.

In view of the following remarks, Applicants respectfully request that the Examiner withdraw all rejections and allow the currently pending claims.

Information Disclosure Citation

Applicants thank the Examiner for considering the references supplied with the Information Disclosure Statements filed July 14, 2006; October 16, 2006; June 27, 2008; and July 20, 2009 and for providing Applicants with initialed copies of the PTO-SB08 forms filed therewith.

Drawings

Applicants thank the Examiner for indicating that the drawings are accepted.

Election/Restriction

The Examiner has withdrawn claim 6 from further consideration as allegedly being directed to a non-elected example. Applicants respectfully traverse.

In the Reply to Election of Species Requirement filed on April 25, 2011, Applicants indicated that claims 1-10 read on the elected species. In fact, Example 1 specifically refers to helically self-crimping fibers (see paragraph [0054]). As such, Applicants respectfully submit that claim 6 should not be withdrawn from consideration.

Priority

The Examiner asserts, “This application is not entitled to the benefit of the prior-filed application because the prior-filed application was not entitled to a priority date as it was not published in English.” The Examiner also asserts that a claim for priority under 35 U.S.C. 119(a)-(d) cannot be based on the JP foreign application, “since the United States application was filed more than twelve months thereafter.” Applicants respectfully traverse.

The PCT publication does not have to be published in English for the present application to claim priority to it. Specifically, 35 U.S.C. § 371 provides as follows (*emphasis added*):

35 U.S.C. 371 National stage: Commencement.

(a) Receipt from the International Bureau of copies of international applications with any amendments to the claims, international search reports, and international preliminary examination reports including any annexes thereto may be required in the case of international applications designating or electing the United States.

(b) Subject to subsection (f) of this section, the national stage shall commence with the expiration of the applicable time limit under article 22 (1) or (2), or under article 39 (1)(a) of the treaty.

(c) The applicant shall file in the Patent and Trademark Office -

(1) the national fee provided in section 41(a) of this title;

(2) a copy of the international application, unless not required under subsection (a) of this section or already communicated by the International Bureau, and a translation into the English language of the international application, if it was filed in another language;

(3) amendments, if any, to the claims in the international application, made under article 19 of the treaty, unless such amendments have been communicated to the Patent and Trademark Office by the International Bureau, and a translation into the English language if such amendments were made in another language;

(4) an oath or declaration of the inventor (or other person authorized under chapter 11 of this title) complying with the requirements of section 115 of this title and with regulations prescribed for oaths or declarations of applicants;

(5) a translation into the English language of any annexes to the international preliminary examination report, if such annexes were made in another language...

Additionally, 35 U.S.C. § 365 provides as follows (*emphasis added*):

35 U.S.C. 365 Right of priority; benefit of the filing date of a prior application.

(a) In accordance with the conditions and requirements of subsections (a) through (d) of section 119 of this title, a national application shall be entitled to the right of priority based on a prior filed international application which designated at least one country other than the United States.

(b) In accordance with the conditions and requirements of section 119(a) of this title and the treaty and the Regulations, an international application designating the United States shall be entitled to the right of priority based on a prior foreign application, or a prior international application designating at least one country other than the United States.

(c) In accordance with the conditions and requirements of section 120 of this title, an international application designating the United States shall be entitled to the benefit of the filing date of a prior national application or a prior international application designating the United States, and a national application shall be entitled to the benefit of the filing date of a prior international application designating the United States. If any claim for the benefit of an earlier filing date is based on a prior international application which designated but did not originate in the United States, the Director may require the filing in the Patent and Trademark Office of a certified copy of such application together with a translation thereof into the English language, if it was filed in another language.

In view of the above, there is absolutely no requirement that the prior-filed application be published in English for Applicants to be entitled to the benefit of the filing date of the PCT application. As such, because the effective filing date of the present application is January 24, 2005 (the filing date of the PCT application), the present application is entitled to priority based on the foreign application, which has a filing date of January 27, 2004, since the PCT application was not filed more than 12 months after the foreign application.

Specification

The disclosure is objected to because the term “RH” requires a complete definition. The term “RH” has been replaced with “relative humidity” throughout the specification. As such, Applicants respectfully request that the objection be withdrawn.

Issues under 35 U.S.C. § 112, second paragraph

Claim 8 is rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter regarded as the invention. Specifically, the Examiner asserts, “Applicant claims ranges ‘130% to 150%’ and ‘100% to 130%’ and must only claim one range.” Applicants respectfully traverse.

Claim 8 recites that “the lengths of the absorbent article measured after 20 seconds and after 5 minutes from the release are from 130% to 150% and from 100% to 130%, respectively, of the initial length.” As such, two different ranges are provided for two different times. In other words, claim 8 recites that the length of the absorbent article is from 130% to 150% of the initial length after 20 seconds from release and from 100% to 130% of the initial length after 5 minutes from release. As such, the presence of two ranges is proper. Applicants respectfully request that the rejection be withdrawn.

Issues under 35 U.S.C. § 102

Claims 1-5, 7, and 10 are rejected under 35 U.S.C. § 102(e) as being anticipated by **Baker ‘177** (US 2003/0135177).

Claims 1 and 7-9 are rejected under 35 U.S.C. § 102(e) as being anticipated by **Tsuchiya ‘696** (EP 1142696).

Applicants note that both references also qualify as prior art under 35 U.S.C. § 102(b). Regardless, Applicants respectfully traverse. Reconsideration and withdrawal of these rejections are respectfully requested based on the following considerations.

Legal Standard for Determining Anticipation

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). “When a claim covers several structures or compositions, either generically or as alternatives, the claim is deemed anticipated if any of the structures or compositions within the scope of the claim is known in the prior art.” *Brown v. 3M*, 265 F.3d 1349, 1351, 60 USPQ2d 1375, 1376 (Fed. Cir. 2001). “The identical invention must be shown in as complete detail as is contained in the ... claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

1989). The elements must be arranged as required by the claim, but this is not an *ipsissimis verbis* test, i.e., identity of terminology is not required. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990).

Distinctions over the Cited References

Baker ‘177 discloses the combined use of tow and SAP to make an absorbent body. **Baker** ‘177 fails to disclose that the absorbent body of **Baker** ‘177 contains the claimed small absorbent clusters. In fact, one of ordinary skill in the art would conclude that the absorbent body of **Baker** ‘177 does not contain the claimed small absorbent clusters since SAP and fibers are merely mixed to make the absorbent body, and therefore, the degree of entanglement between SAP and fibers would be low.

Tsuchiya ‘696 also fails to disclose the claimed small absorbent cluster. In addition, **Tsuchiya** ‘696 do not disclose the use of a helically crimped fiber.

As discussed above, neither **Baker** ‘177 nor **Tsuchiya** ‘696 discloses the claimed small absorbent cluster. Further, **Baker** ‘177 and **Tsuchiya** ‘696 do not disclose the use of a helically crimped fiber. The absorbent member containing the claimed small absorbent cluster having the helically crimped fibers successfully exhibits extensibility. Moreover, due to the increased capillarity and the increased liquid drawing properties of the claimed small absorbent cluster, the absorbent member quickly absorbs liquid even if the absorbent member becomes thin due to elongation along the plane direction of the absorbent member (paragraphs [0021] and [0024] of the present specification). **Baker** ‘177 and **Tsuchiya** ‘696 do not disclose these advantages.

Accordingly, the present invention is not anticipated by **Baker** ‘177 or **Tsuchiya** ‘696 since the references do not teach or provide for each of the limitations recited in the pending claims.

For completeness, Applicants also respectfully submit that **Baker** ‘177 and **Tsuchiya** ‘696 do not render the present invention obvious because neither the references nor the knowledge in the art provide any disclosure, reason, or rationale that would allow one of ordinary skill in the art to arrive at the present invention as claimed.

New Claims 11-12

Claims 11-12 have been added for the Examiner's consideration. Applicants respectfully submit that claim 11, which depends from independent claim 1, and claim 12 are allowable for the reasons given above. In addition, claims 11-12 recite further limitations which are not disclosed or made obvious by the cited references.

Conclusion

All of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding rejections and that they be withdrawn. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Chad M. Rink, Registration No. 58,258, at the telephone number of the undersigned below to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Director is hereby authorized in this, concurrent, and future replies to charge any fees required during the pendency of the above-identified application or credit any overpayment to Deposit Account No. 02-2448.

Dated: AUG 15 2011

Respectfully submitted,

By

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